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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 GENE ALLEN,

10 Petitioner,

11 vs.

12 STATE OF NEVADA,

13 Respondent.
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Case No. 3:06-CV-00079-LRH-(VPC)

ORDER

15 Petitioner has filed a Notice of Appeal (#4) and an Application to Proceed in Forma
16 Pauperis on appeal (#5). Petitioner is unable to pay the appellate filing fee, and the Court grants his
17 Application to Proceed in Forma Pauperis (#5).

18 Petitioner has also submitted a Representation Statement (#6), which the Court
19 construes as an application for a certificate of appealability. To appeal the denial of a petition for a
20 writ of habeas corpus, Falconer must obtain a certificate of appealability, after making a “substantial
21 showing of the denial of a constitutional right.” 28 U.S.C. §2253(c).

22 Where a district court has rejected the constitutional claims on
23 the merits, the showing required to satisfy §2253(c) is straightforward:
24 The petitioner must demonstrate that reasonable jurists would find the
25 district court’s assessment of the constitutional claims debatable or
26 wrong. The issue becomes somewhat more complicated where, as
27 here, the district court dismisses the petition based on procedural
28 grounds. We hold as follows: When the district court denies a habeas
petition on procedural grounds without reaching the prisoner’s
underlying constitutional claim, a COA should issue when the
prisoner shows, at least, that jurists of reason would find it debatable
whether the petition states a valid claim of the denial of a
constitutional right and that jurists of reason would find it debatable
whether the district court was correct in its procedural ruling.

1 Slack v. McDaniel, 529 U.S. 473, 484 (2000); see also James v. Giles, 221 F.3d 1074, 1077-79 (9th
2 Cir. 2000). The Court dismissed this action because it had summarily dismissed an earlier petition
3 on the merits in part, Allen v. Nevada, Case No. 3:03-CV-00672-LRH-(RAM), and Petitioner had
4 not received authorization from the United States Court of Appeals for the Ninth Circuit to
5 commence this action. Order (#2), at pp. 1-2. Reasonable jurists would not find this Court's
6 conclusion to be debatable.

7 IT IS THEREFORE ORDERED that petitioner's Application to Proceed in Forma
8 Pauperis on appeal (#5) is **GRANTED**. Petitioner shall not be required to make any prepayment of
9 the filing fee for his appeal.

10 IT IS FURTHER ORDERED that Petitioner's Representation Statement (#6), which
11 the Court construes as an application for a certificate of appealability, is **DENIED**.

12 DATED this 8th day of May, 2006.

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16 LARRY R. HICKS
United States District Judge
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